

PLANNING AND ZONING COMMISSION  
Public Hearing/Regular Meeting

The Lyme Planning & Zoning Commission held a public hearing/regular meeting on Monday, November 9, 2009 at 7:30 p.m.  
at the Lyme Consolidated School, 478 Hamburg Road,  
Lyme, CT, 06371

MEMBERS PRESENT: David Tiffany Chairman, Hunter Ward, Steve Mattson, Bob Winslow, Kel Tyler, Joan Rich, K.C. Mazer, Bernie Gigliotti ZEO, Patsy Turner Secretary, and Attorney Mike Carey.

**Public Hearing**

**Pembroke House Designs LTD ( Allison McCall) 242 Beaver Brook Road), Tax Map 45 Lot 10; a special permit application to enlarge an existing dwelling on Cedar Lake within the Eightmile Watershed Overlay District(EWOD).**

Tiffany: The Pembroke House Designs LTD application has been reviewed by the commission numerous times and all the information has been worked through.

Present at the meeting were Tom Metcalf, Attorney Fritz Gahagan, Steve Laud (Architect), and Allison McCall.

Metcalf: The certified letter receipts were all received. There were two letter submitted into the record; 1) George Calkins stating the plans were reviewed, and 2) Rich Snarski stating support and input. The information in the application has been viewed by the commission at a few different meetings and the commission's comments have been incorporated into the plans. The application shows the plan for an addition to a structure in the EWOD; the special permit requires a public hearing. The plans have been before the Inland/Wetlands Commission and approval was received at the October meeting. The entire addition is within the Eightmile Watershed Overlay District; the goal is to have minimal impact to the environment, the wetlands on the property will be restored. The addition will be modest keeping with the Zoning Regulations. The goal for a buffer around Cedar Lake for wooded coverage in the district is 90% coverage, 92% will be maintained on this property. The wetlands have direct contact with the lake; the restoration will enhance the property. The existing nonconforming septic system will be replaced by a new pumped system; Calkins has approved the plans. The overhead utilities will be relocated to underground. The paved driveway will be replaced with gravel. The addition will have minimal disruption and clearing (shrubbery) on the West side of the property. The plan complies with the intent of the EWOD. Snarski has suggested not using filtration system for the roof drainage; the water being directed to the wetlands area would be beneficial to the area during dry seasons. The construction fence and silt fence will surround the total construction site; standard notes, construction sequence, and the wetlands restoration plan which will be supervised by Snarski.

Laud: The house design preferred by the Wetlands Commission is the 2 storey structure as to minimize the coverage on the site. Colored drawings were present depicting the structure and how it blends with the topography of the property; the view from the lake does not have a sky backdrop, but a hillside. The height above grade will be 22 feet; the siding and shingles will be cedar as to fit with the surroundings.

Tyler: The siding will be left natural and the total square footage will increase.

Laud: A natural stain will be used to preserve the wood. There will be 680 square foot added to the home on two levels plus two open porches.

Gahagan: Summary of regulations that apply to the EWOD was handed to the commission; the information was explained as it pertains to the property. The map of the topography shows the mature trees and natural under story. Within the EWOD no mature trees will be removed; 200 square footage of the under story will be removed. There will not be disturbance of the primary buffer located on the property. The septic system will be relocated uphill from the home. The total area of the restored wetlands will be 2600 square foot (76% of the disturbed area). The application is consistent with the purpose of the EWOD. The definitions of the regulations (2.28a & 2.14a) were read into the record. There is very little disturbance of the buffer. The improvements are a positive impact on the property. The residential lot is located entirely within the Eightmile Watershed Overlay District; the upland on the property is being used for the septic system to keep the system outside the wetlands area. Changes were made to the plans to avoid accumulative affects. The property is located in a RU 80 zone; there is an existing structure on the property and plan is consistent with the Town's Plan of Conservation and Development. The completed structure will be a modest size; 2062 square foot home with lot coverage of 2.2%. The applicant has made every reasonable effort to minimize the impacts to the property. The information was examined at the preliminary hearing as to move toward the best design for the property. The EWOD was never intended to deprive property owners of significant developing rights; the intent was to have land disturbing activities outside the district when possible and require the activities be designed to minimize negative impact on the district. The applicant has accepted the commission's suggestion and has created a design to follow with the standards of the regulations within the EWOD on Cedar Lake.

Tiffany called for questions from the commission and the public present; the first public hearing listed on the agenda was closed and the regular meeting for Pembroke House Design LTD, (Allison McCall) was called to order at 8:00 p.m.

#### **Regular Meeting**

Pembroke House Designs LTD (Allison McCall) 242 Beaver Brook Road Tax Map 45 Lot 10; a special permit application to enlarge an existing dwelling on Cedar Lake within the Eightmile Watershed Overlay District.

Tiffany called for a motion to approve the application of Pembroke House Designs LTD. Tyler moved to accept and approve the application as present; the motion was seconded by Mazer and passed unanimously.

Tiffany called for a motion to continue the regular meeting, Ashlawn Farms, open an informational public hearing. The motion was moved by Mattson, seconded by Winslow, and the motion was carried by all members present.

Tiffany: The informal hearing is being held to hear from the public, neighbors, and council as an open forum.

#### **Public Hearing**

##### **Ashlawn Farms, 78 Bill Hill Road Tax Map 25 Lot 44; review of the special permit for operation of the farmers market.**

Present at the meeting were Glenn and Carol Dalhke, and Matt Abrams and Attorney John Bennet, representing Abrams.

Tiffany stated Attorney John Bennet would present information concerning Ashlawn Farms, and then the public will comment, followed by the commission's comments/questions.

Bennet: There has been publicity published to do with the Farmers Market and Ashlawn Farmers; on the Web, articles in the papers, and letters written to the Zoning Enforcement Officer. This issue does not have to do with the quality of the product being sold, not were peoples involved are from, or whom moved into the community first. Our view is this issue is about compliance with zoning regulations on both sides of the wall dividing

the two properties. The files on Ashlawn Farmer have been viewed and discussed with Gigliotti; the conclusion is that the Ashlawn Farm's Farmers Market is out of compliance with its permit. It is believed that zoning regulations do not permit this type of activity within a residential zone. At the time when the Ashlawn Farmers Market was approved Mrs. Abrams did not oppose the special permit, but supported the market. A special exception was approved by the Zoning Board of Appeals.

Tiffany: This meeting is informal; all materials, letters, and information will be collected and placed in the file.

Bennet: Minutes from the ZBA meeting were referred to and sections were read into the record. The market was operating before the permit was approved. The approval in the files states that the operation is allowed between the hours of 3-6 p.m. on Fridays only; there is no other approval. An application was submitted and considered by the ZBA on July 18, 2002; a section from the meetings' minutes was read into the record. The application was approved subject to the rules and regulations submitted by Dahlke; rules to be described to be part of the special exception. There was a violation sent August 2007 to Dahlke; running a flea market, parking issues, and un-permitted signs on Rt. 156. On October 2008 a cease and desist issued due to exceeding their seasonal time limits; the Farmers Market was operating in violation of the permit. Gigliotti has stated the time is open-ended, that translates to no zoning at all. The parking is a large issue; photographs were submitted of parked cars along the street.

Tyler: The seasonal restrictions for the Farmers Market run through which months.

Bennet: The approval was for June through October; the cease and desist was issued in 2008 due to the market continuing into November. The comments were on the regulations being violated. This meeting is a prefect example of the numbers of cars parked along the road; Dahlke has stated 1,000 people visit the farm within a 3 hour period. The volume exceeds the zoning regulations; a special exception was granted. Details from the Ashlawn Farm's website were read into the record; retail sales and/or café can take place in a commercial zone only. The P&Z files show no signed permits. A decision issued by Superior Court was read into the record; the information stated had to do with accessory uses. If the property was sold the Farmers Market and Coffee Shop would continue. If the want is to produce large volume, it should be done in a commercial zone. The Planning and Zoning files contain an incomplete application and a letter stating the application was incomplete. There are no permits, no approval, no floor plans, no site plans; there is no way to know what was approved. Home enterprise can not occupy more than 750 square feet; the coffee shop has not been measured. Other towns have Farmers Markets taking place in commercial zones, not residential neighborhoods. There is not a section in the regulations which covers Farmers Markets. There is an application in the file for the roasting business and the expansion of the building, but with no approval; Frank Skwarek was the Zoning Enforcement Officer at the time the first application was received. There is not a permit for a café or restaurant. The regulations do not cover retail sales in a residential neighborhood. A section of the regulations relating to Bed and Breakfasts were read into the record. More photographs were submitted showing the types of sales at the Farmers Market; the farm looks like a retail sales outlet. The enterprise of the coffee shop is applauded but not in the Abrams' backyard. The development rights of the farm have been sold. The Abrams have applied for permits for all their activities; Dahlke has not followed the same process. The commission has spoken to council about the outdoor burning furnace; the furnace is outside the commission's purview. The outdoor furnace does require a building permit and a taller smokestack is required to allow the smoke to rise higher above neighboring homes; the furnace should not be operated, a CO has not been received. The smoke enters the neighbor's property at ground level is a violation and has been sites as a violation. Photographs of the smoke entering the property were presented. State of Connecticut DEP publication shows one outdoor wood burning furnace to heat a home equals 3 to 8,000 homes being heated by natural gas. The Planning and Zoning should act on the wood burning furnace. The Town of Monroe has shut down the use of these types of furnaces and the DEP regulations allow towns to take action on the furnaces. The want is to have a reasonable compliance with the Town of Lyme Planning and

Zoning regulations. Gigliotti has stated there is a permit in place, but no documents in the file show an approved application. The public is upset. There has to be enforcement; the operation of a café, retail sales, and a production facility are not represented in the regulations. A request for cease and desist order has not received a response, the regulation need review. The wood burning furnace was placed directly behind the Abrams' home; the property is four acres, why was the furnace not placed in a different location.

Tyler: The photographs presented of the parked cars shows 20 cars; have the 1,000 cars visiting the farm in three hours been counted.

Bennet: The number of people visiting the farm in three hours was incorporated in an advertisement for Ashlawn Farms.

Winslow: The furnace is used for warming the Dahlke home.

Bennet: It is believed that the furnace heats the home; the pollution given off is great.

Tyler: Marketing and advertising should not be used as fact.

Bennet: The issue is that cars are not to be parked along the street, but parked in the field.

Gigliotti: The application allowed parking on the street; on Bill Hill Road.

Tyler: The Abrams are living in the home currently.

Bennet: The Abrams do not live in the home presently, there is a tenant living on the property.

Abrams: The tenant is the care taker of the horses on the property.

A member of the public present approached the commission, which was not appropriate.

Tiffany to Gigliotti: The letters received were entered into the file.

Gigliotti: Twenty plus letters received were in support of the farm, there were no letters in opposition.

Tiffany: The condition of the permits can be explained by Gigliotti; the Abrams' council has given his input. Mike Carey the town's council can interject.

Carey: It would be more efficient to hear from the public, Gigliotti and the commission can review the input in a regular session; the public hearing was intended to collect information from the public.

Tiffany: The public's input will be taken in an orderly manner; if the dialog gets repetitive the meeting will move along. The information presented this evening will need to be reviewed by the commission and Attorney Carey. Most of the material is accurate, although there is more incorporated in the files which needs revealing. There is a large number of public present; identify yourself for the record and try to keep the statements brief. The regulations need to be followed, which should be kept in mind, look past the animosity, and focus on everyone has rights.

Bill Hayden-170-3 Hamburg Road: Zoning regulations are a must in a town to preserve the atmosphere. The public present raised their hands in favor of the market and not in favor 3 hands raised. There may not be a permit; on the busiest time there are no more than 100 cars. The smell of wood smoke from furnaces and wood stoves is enjoyable. The attorney quoting a deceased member of the community was unethical. The public does not find the farm offensive; to call the Farmers Market a flea market is an insult. The proper permit should be filed.

Tiffany: Bennet was quoting meeting minutes and did not mean any disrespect to any member of the community.

Mimi Dunner- Hamburg Road: The farm is the only gathering area in town, the items sold at the Farmers Market, if not food or produce, are handmade; this pleasant activity should continue and the review of the zoning regulations is a must.

Kay Griffin- 2 Old Stone Post Road: A resident since 1997, the area is pleasurable and the highlight is the Farmers Market. There are steps that need to be taken to maintain Ashlawn Farmers.

Thor Holth- Blood Street: The previous owners of the farm sold milk, hay, and barley; there seems to be a difference in use of the old farm and the farm today. The distinction being drawn is on the success of the farm not what is being sold. The farm is being utilized to its fullest, after the development rights were sold.

Gwen Fletcher: Abrams has stated his intent is not to close down the café. The commission will work with the owners to correct the records and to keep the market/café operating.

Michael Flanagan: The property is not being used as a full time residence and the owners could avoid the hours of operation of the Farmers Market on Fridays and Saturdays.

Anita Kopchinski -Ledyard, New London Farm Bureau, Farm Market Oversight Chair, (Hidden Brook Gardens) : Questions that arise about Farmers Market are answered by the Oversight Chair, Farmers Markets tend to include artisans which sell homemade or self grown items. Venders depend on the Farmers Markets to help maintain their businesses. The hope is that paperwork which needs attention can get taken care of as to allow the market to continue.

Tiffany called for new input to help support the farm; most public present are in favor of the market.

Paul Kautowski – Barrel Depot: The venders at the Farmer Market sell artesian material. There is not a parking issue at the Farmers Market. The signs being used during the operation times of the market, one hour after the market has ended there are no signs in sight; realtor and tag sale signs are more of an issue. The outdoor wood burning furnace gives off the same amount of smoke as a regular indoor wood stove.

Don Gerber-272 Hamburg Road: A regular commuter on Bill Hill Road; the Farmers Market does not cause the commute from work to be rerouted. The signs located along the road are directing cars to park in the field adjacent to the market location. The public present are not adhering to the signage; everyone could do their part to help out the Dahlkes by parking in the field, not along the road.

Jeanne Potter- 3 Rose Lane, Old Lyme: There are Farmers Markets across the country; Ashlawn Farms is very unique, represents a sense of community, and is a rare experience that should be kept.

Marilynn Wilkins-Old Lyme: The previous owners of the farm likely did not have all the proper permits to sell milk in the past. The Lyme Garden Club thanks Dahlke for allow the club to have a booth at the market.

Nunzio Corsino-124 Four Mile River Road, Four Mile River Farm: Owner of Four Mile River Farm and farm Ashlawn Farm. The Dahlke Farm has provided a place for many organizations in town; local bands, Lyme Fire Department, Garden Club, the Public Library, and story tellers for local kids to enjoy. The field for parking is used by Four Mile River Farm for hay. There is not a lot of impact to the neighborhood from the Farmers Market; public of all ages enjoy visiting the market. The coffee shop and market provides employment to local teenagers and adults. Farmers Market helps keep local businesses in business.

Glenn (Chip) Dahlke-78 Bill Hill Road: The statement said having to do with the 1,000 people visiting calculates to 300 people an hour; the parking is not a huge issue. During

the peek in August, there may be cars parked along the road, when the photographs presented were taken. Ashlawn Farms is a farm; Jack Tiffany uses the farm for corn fields and Nunzio Corsino farms the property for his business. The Dahlke family is not leaving the community and the public is welcome to continue to purchase their produce and coffee. Thanks goes out to the public in attendance at this public hearing.

Roger Clements-168 Hamburg Road: Lyme does not have regulations that help preserve farms; a regulation (right-to-farm) could be put in place. The farms in the area must be preserved and assistance keeping their farms running in this economy.

Web Scott- Scott's Orchard, East Lyme: Scott's Orchard has been a vendor at the Lyme Farmers Market since the beginning; it gives a nice outlet for the sale of produce. The coffee beans are an agricultural product; Carol Dahlke's vision of roasting the beans and selling her product was very innovative.

Wendy Hill- Lyme: The Dahls are a family and running a business from home which allows them to raise their young children.

Eileen Baker-Old Saybrook: The market is very charming, a place where the community can purchase local produce, and provides healthy living. The commission should view the information sensitively. The area is a wonderful place to live.

Blake Johnston-Salem Road: There are 122 Farmers Markets in the State of Connecticut; the markets represent the public reducing their carbon footprint. Rules need to be changed as to adapt to changes in the environment; the communities are trying to go GREEN by buying locally.

Ronald Wojcik-455 Hamburg Road: The problem is not with the farm, not with the market, but the problem is with the paperwork not being in order; the paperwork should be viewed and corrected so the Farmers Market can continue in the springtime.

Mike Pecks-Old Lyme: Farmers Markets are essential in keeping small vegetable growers in business. Farmers are located in residential areas and are commercial operations.

Marta Cone-Bill Hill Road: Property owner adjacent to the Dahlke's farm; the Farmers Market is a wonderful part of the community. Parking has never been an issue. There is more traffic during the market's operating hours. The outdoor wood burning furnace is not visible from our home. The coffee roasting is the only smell which enters to our property and is a welcomed scent. The hope is the commission does everything in their power to allow the Coffee Shop and Farmers Market to keep operating.

Carol Dahlke-78 Bill Hill Road: When the business was started on the farm, there was a tradition in Chip's family that everyone was welcomed with a pot of coffee. There were always people drawn to the farm; the business is run with respect for the neighbors and the town. The want is to know why the Abrams feel as they do; from the field across the farm the sounds from the Coffee Shop can not be heard, even on the busiest day.

Tiffany called for response from Attorney Bennet.

Bennet: Nothing heard at this meeting addresses the issues at hand; the goal is to have the farm in compliance with the zoning. It is not the want to shut down the market or the farming operation. The permits should be applied for the activities which are occurring on the farm. Issues have been raised by Gigliotti by the enforcement acts. The charm of the neighborhood does need preserving; all neighbors rights. The regulations which are in place have merit. Permits should be applied for by the owners of the farm, the Farmers Market has a permit which is being exceeded; violations have been sited, the original business was started without permits.

Tiffany: The public present has made this meeting continue smoothly. Attorney Bennet and Matt Abrams are commended for stating what they believe. The public opposed to the market can comment.

Gigliotti: The information presented can be reviewed during a regular meeting.

Tiffany called for a motion to close the public informational hearing. Tyler motioned to close the public hearing. The motion was seconded by Rich and passed unanimously.

### **Regular Meeting**

Tiffany reconvened the regular meeting.

**New Business** N/A

**Old Business**

#### **Report back on the outcome of a meeting with Gary Reynolds.**

Present at the meeting were Don Gerber and Tina West.

Gigliotti: D. Tiffany, Gary Reynolds and I have met to discuss the issues which surround his operation; Reynolds has different interpretation of what the permits allow. There was a proposal to place a 6 foot fence on the property line between the dealership and the (Gerber) neighboring property; to solve the curbing which are not anchored and the placement of snow onto the Gerber's property during the winter, the solid fence would run from the road down to the water. The plantings in the area were not completed; Reynolds claims the extra plantings were not necessary.

Ward: There were a few trees planted in the area for screening.

Gerber: Two trees were planted after mature trees were removed; the trees planted did help with the shading of the lights. History shows proposed plans have not been acted on; the fence may not be constructed.

Gigliotti: The main issue Gerber has is the lighting being on after hours in the new parking lot; Reynolds states the timers are the reason behind the lights being on late.

Tyler: The timer could have backup batteries, to solve the issue of power outages.

Gerber: The lights from the parking lot should be visible from Reynolds' home.

Gigliotti: The boats parked near the front of the parking lot are not permitted; Reynolds interrupts his permit allows the boats to be parked along the road. In the regular parking lot for the marina there are also boats along the road, where Reynolds had mentioned a fence would be placed as to avoid boats parked in that location. The lights at the dealership were discussed with no resolution. CL&P has never visited the lot as stated by Reynolds.

Tiffany: The commission was initially vague with the curbing; the follow up was more specific in having the curbing anchored.

Rich: A notice was sent to Reynolds after decisions were made of what issues needed attention.

Gigliotti: A new letter was not sent after the meeting this week.

Gerber: When expansions were done to the buildings, an as built plan was added to the file as required by the commission. The as built is the plan of record for the property; since that time there has been expansion to the parking area.

Gigliotti: There was a subsequent as built approved by the commission.

Tiffany: Stipulations were attached to the approval of the as built plan.

Gerber: The stipulations were not accomplished. A letter (March 2007) was sent to the commission requesting review; the letter listed concerns. There have been discussions over the years, yet nothing has changed. The Board of Tax Review conquered violations in the neighborhood constituted tax reductions; the zoning issues were unresolved.

Zoning regulations are necessary and supported.

Tiffany: The parties have been met with; the next step is a question for the commission.

Reynolds states that the Planning & Zoning Commission should not be brought into a family feud.

Tyler: Gerber's concerns are coming from a tax payers stand point and the commission has to follow the regulations and/or change regulations as considered necessary.

Gerber: The concerns were attempted to be resolved; Reynolds has stated everything is legal, if not happy take us to court.

Tiffany: Gerber has been patient and is requesting a viable solution.  
Gigliotti: Numerous letters have been sent and have been ignored.  
Carey questioned Gigliotti: Was a cease and desist order officially sent.  
Gigliotti: Cease and desist was sent when the new parking lot was started; that was ignored.  
Tiffany: The commission has tried to work with Reynolds.  
Rich: Discussions have taken place during other meetings.  
Carey: Issuing a cease and desist allows Reynolds to go before the Zoning Board of Appeals.

Gerber: The dredging permit has been approved by the DEP. Gigliotti has stated there is no special permit.

Gigliotti: Keith Neilson (Docko, Inc.) was called about the site plan development; Reynolds had told Neilson there was no need for a special permit. The activities are all within a regulated area and require both a special permit and an approval from the Wetlands Commission. At the time the permit was pending with the DEP Reynolds questioned if any actions are necessary; the response was not until the DEP permit is completed. Which was translated by Reynolds, no permit was needed.

Tiffany: A letter should be sent to Reynolds.

A discussion continued between the commission members as to what action to take.

Tyler: The numerous issues are documented in the Planning and Zoning file.

Mattson: The file has grown over the last two years.

Tiffany: The commission has to pursue issues.

Carey and commission discussed other violations in town.

Tyler: The regulations should be enforced; Reynolds has been given leeway.

Winslow: The commission has attempted enforcement without result.

Gigliotti: With every letter sent, one or two things are completed, than ignored.

Mattson: The commission has made many attempts with Reynolds; time to represent the town. The commission has to commit and move forward.

Carey suggested the commission move into executive session.

Gerber: Tina West has issues to discuss.

Gigliotti: West's issues were discussed with Reynolds; the meeting went no where. The fill on his property has exceeded the allowable limit. Material has been placed in the way of wood chips and leaves to cover the bank. The commission has suggested plantings along the bank for screening and stabilization purposes. The plantings have not been planted.

Carey: A motion to add the possibility of an executive session to discuss litigations.

Mattson motioned to amend the agenda for possible executive session to discuss Reynolds situations and his properties.

The motion was seconded by Tyler and passed by all members present.

The motion to move into executive session to discuss possible litigations regarding issues with Reynolds' properties was moved by Tyler, seconded by Winslow and passed unanimously.

#### **Executive Session**

**The commission entered into executive session at 9:59 p.m.**

Members present during session were David Tiffany, Hunter Ward, Steve Mattson, Bob Winslow, Kel Tyler, K.C. Mazer, Joan Rich, Bernie Gigliotti, and Attorney Mike Carey.

**Regular Meeting (old business) reopened at 10:12 p.m.**

A motion was created by Tyler, the original motion was withdrawn, and a new motion was stated to include more details.

Tyler moved the commission to enlist Attorney Mike Carey and his legal services to review the records regarding pending litigations against Gary Reynolds and determine if there are substantial reasons and if decided to move forward with a lawsuit against Reynolds, a decision will be returned to the commission by December 1, 2009. The motion was seconded by Mazer and the motion was carried by all members present.

#### **APPROVAL OF OUTSTANDING MINUTES**

Tiffany entertained a motion to approve the minutes of the October 13, 2009 regular meeting.

Winslow clarified the minutes in the Czikowsky property section, there was not a grant received by the Nature Conservancy.

Gigliotti: Additional money was received by the Nature Conservancy from an individual.

Mattson: The money was received as a donation not a grant.

Winslow moved to amend the minutes of the October 13, 2009 meeting with the correction listed, the motion was seconded by Ward, and the motion was passed.

A motion to adjourn at 10:16 p.m. was moved by Tyler, seconded by Rich, and the motion was carried.

Respectfully submitted,

Patsy Turner, Secretary